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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/586,999	07/20/2006	Lester M. Schwab	06051.P1	2929
62755	7590	05/15/2007		
LARRY D. JOHNSON P.O. BOX 470277 CELEBRATION, FL 34747			EXAMINER PATEL, TARLA R	
			ART UNIT 3772	PAPER NUMBER
			MAIL DATE 05/15/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/586,999

Applicant(s)

SCHWAB, LESTER M.

Examiner

Tarla R. Patel

Art Unit

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 July 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| <p>1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.</p> | <p>4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.</p> <p>5) <input type="checkbox"/> Notice of Informal Patent Application</p> <p>6) <input type="checkbox"/> Other: _____.</p> |
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DETAILED ACTION

Specification

1. The abstract of the disclosure does not commence on a separate sheet in accordance with 37 CFR 1.52(b)(4). A new abstract of the disclosure is required and must be presented on a separate sheet, apart from any other text.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1,6 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Padilla, Jr. (6,053,170).

Padilla, Jr. discloses a splint apparatus for use with intravenous therapy.

The splint apparatus comprises an upper portion (see fig 7, part of user toe area) adapted to be positioned above a patient's limb joint and lower portion (see fig 7, area above ankle) connected to upper portion at an angle from shown to be 90 degrees, the lower portion (see fig 7, area

above ankle) including a pair of sides (52,53) and a central aperture (58) for passage of an intravenous catheter, lower portion adapted to be positioned below a patient's limb joint (see fig 7), wherein when lower portion is secured below a patient's limb joint, upper portion prevents flexion of the patient's limb joint beyond angle (since, it is made rigid, it is inherently prevents flexion).

With respect to claim 6, Padilla, Jr. discloses channels 57,58, which is covered with rigid surround, is inherently blocking the access to the aperture.

With respect to claim 7, Padilla, Jr. discloses a lower portion including guide (Channels 57,58) for capture of intravenous tubing.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Padilla, Jr. in view of Vergano et al. (5,845,643).

Padilla, Jr. substantially discloses the invention, please see rejection to claims 1,6 and 7 above, Padilla, Jr. further disclose that device is for treating a human; however, Padilla, Jr. does not disclose that the device is for use in veterinary medicine, the angle is between 30-60 degrees, the angle is approximately 47 degrees for veterinary use and the angle for human use is approximately 53 degrees.

However , the limitation "for use in veterinary medicine" is a recitation of the intended use of the splint. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Since the limitation have not been positively claimed, it is inherent that the splint of Padilla, Jr. can be use for use in veterinary medicine as required by claim.

Vergano et al. teaches an arm board for vascular access and method of using the same, where the board (splint) has an angle of 30 to 45 degrees (70, column 4 lines 6-9). At the time of invention was made, it would have been obvious matter of design choice to one having an ordinary skill in the

art to have the angle of the Padilla, Jr. splint to be 30-45 degree, as taught by Vergano et al. to have flexibility to user's joint.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Padilla, Jr. in view of Warner (6,276,364).

Padilla, Jr. substantially discloses the invention, please see rejection to claims 1,6 and 7 above; however Padilla, Jr. does not disclose lower portion includes incremental measurement marks to properly size the apparatus to the patient.

Warner teaches a protective sleeve for a chronically implanted intravenous site having portion (15a, column 5 lines 19-21, recitation, where In a patient that is smaller in size the indentation 15a may occur at the end and no cutting will occur) cut in situ or marked. At the time of invention was made, it would have been obvious to one having an ordinary skill in the art to use the teaching of having marked and cut the device of Padilla, Jr., as taught by Warner for sizing the device to patient's need.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Schaeffer (5,577,516) discloses an intravenous catheter support having a pair of sides and a central aperture

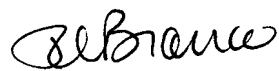
for passage of an intravenous catheter. Caypinar (3,256,880) discloses a convertible intravenous arm board. Heck (RE 32,335) discloses a fluid administration splint having 90-degree angle.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tarla R. Patel whose telephone number is 571-272-3143. The examiner can normally be reached on M-F 6-3.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TP


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5/11/07